

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PERRY MACKALL,

Plaintiff,

vs.

Case No. 05-CV-71351  
HON. GEORGE CARAM STEEH

DENNIS KENNEDY,

Defendant.

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ORDER ACCEPTING OCTOBER 27, 2005 REPORT AND RECOMMENDATION,  
GRANTING DEFENDANTS' MOTION TO DISMISS (#11),  
AND DISMISSING PLAINTIFF'S CLAIMS

Plaintiff Perry Mackall, a Michigan prisoner appearing pro se, filed a complaint on April 7, 2005, alleging 42 U.S.C. § 1983 claims of deliberate indifference to medical needs against defendant Dennis Kennedy for failure to provide appropriate medical treatment for diabetes, and for failure to assign plaintiff a bottom bunk in a non-smoking unit. Defendant's motion to dismiss for failure to exhaust administrative remedies was referred to Magistrate Judge Mona Majzoub. Magistrate Judge Majzoub issued an October 27, 2005 Report and Recommendation recommending that defendant's motion to dismiss be granted after plaintiff failed to file a response to the motion. Defendant's motion was certified as properly served upon plaintiff at the Deerfield Correctional Facility in Ionia, Michigan. See Defendant's July 15, 2005 Motion to Dismiss, at 1, 6. The Report and Recommendation was mailed to plaintiff at his Deerfield Correctional Facility address, but was returned as "undeliverable" with the notations that plaintiff was "paroled," and left no

forwarding address. As a consequence, plaintiff has not filed objections. "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." U.S.C. § 636 (b)(1)(C).

Plaintiff failed to respond to defendant's motion to dismiss following proper service of the motion. Plaintiff failed to provide a forwarding address upon his apparent parole release. The court has reviewed the Report and Recommendation, and agrees that defendant's motion to dismiss should be granted. Accordingly,

Defendant's motion to dismiss is hereby GRANTED. Plaintiff's claims are hereby DISMISSED without prejudice for failure to exhaust administrative remedies.

SO ORDERED.

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

Dated: November 22, 2005

#### CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on November 22, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Secretary/Deputy Clerk